

PATENT COOPERATION TREATY
PCT
INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

REC'D 09 DEC 2004
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Applicant's or agent's file reference Case 21502	FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)
International application No. PCT/EP 03/10789	International filing date (day/month/year) 29.09.2003	Priority date (day/month/year) 21.11.2002
International Patent Classification (IPC) or both national classification and IPC C07D311/72		
Applicant DSM IP ASSETS B.V.		

<ol style="list-style-type: none"> 1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36. 2. This REPORT consists of a total of 5 sheets, including this cover sheet. <p style="margin-left: 20px;"><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p style="margin-left: 20px;">These annexes consist of a total of 2 sheets.</p> 3. This report contains indications relating to the following items: <ul style="list-style-type: none"> I <input checked="" type="checkbox"/> Basis of the opinion II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application
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Date of submission of the demand 27.05.2004	Date of completion of this report 08.12.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Boletti-Cremers, K Telephone No. +49 89 2399-8541



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I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

2-19 as originally filed
1, 1a received on 15.11.2004 with letter of 12.11.2004

Claims, Numbers

1-24 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-24
	No: Claims	
Inventive step (IS)	Yes: Claims	1-24
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-24
	No: Claims	

2. Citations and explanations

see separate sheet

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POINT V.

The following documents , quoted in the I.S.R., have been considered as relevant for the examination of the present application . Their numbering will be adhered to for the rest of the procedure.

- (1) EP-A-0 949 255.
- (2) US-A-3 708 505 .
- (3) WO-A-03/037883 (point VI).

1. Novelty.

In view of the fact that both documents (1) and (2) use trimethylhydroquinone instead of its 1-acetate derivative for the purpose of making of α tocopherol by alkylating the 3- position of the hydroquinone ring of the starting material as on file, the claimed matter can be regarded as novel with respect to the contents of those 2 documents.

Although (3) , as filed on 23.10.2002 and published on 08.05.2003 and claiming a priority right on 31.10.2001, is not prior art according to the Chap II PCT proceedings, its content will not affect the novelty of the regional European proceedings to come, because (3) merely relates to the same type of process as disclosed in (1) and (2).

2. Inventiveness.

2.1 In view of the comparative argumentation submitted by the Applicant on 12.11.2004 in support of the advantages of present process towards those encompassed in (1) and (2) , the claimed process alternative (a) can be regarded as inventive with respect to the prior art. It is reminded that alternative (b) as in claim 1 is not only novel but also inventive with respect to the contents of (1) and (2).

2.2 The extensive examination of (3), on the question whether it constitutes prior art or not , will depend essentially on the analysis of the claimed priority rights of present application and will only be performed in the regional European proceedings to come.

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